

OPEN MEETING AGENDA ITEM

From: Abhay Padgaonkar

Date: October 3, 2021

Docket: APS Rate Case (E-01345A-19-0236)

Re: **UPDATED: Recommendations for and Additions to the Proposed Amendments**

Dear Commissioners:

Below are the **updated** recommendations along with the rationale behind them for all proposed amendments, including those filed since the previous update, which was filed on Friday at 11 a.m.

(Legend: 👍=Yes; 🙅=No; 😕=Unsure; ➡=Replace; 🔄=REVISE)

Amendment	Recommendation/ Rationale
Márquez Peterson-1R (4-7 p.m.)	<p>👍👍 In addition to greater convenience, a shorter 4-7 p.m. on-peak period will more effectively enable ratepayers to eliminate on-peak usage, generate substantial savings, and reduce the peak system demand benefitting all.¹ However, the change must be paired with new customer education.</p> <p>🔄 <u>This Amendment must also require and hold APS accountable in a measurable and meaningful way to educate ALL customers on how to shift usage to essentially eliminate on-peak consumption altogether through a simple, practical, and truthful multi-channel plan that is first approved by the Commission and prominently carried out by APS — unlike, for example, the precooling tip along with misleading information that APS has buried in a newsroom article.²</u></p>
Márquez Peterson-2 (??)	??
Márquez Peterson-3 and Tovar-1 (SCR)	<p>🙅🙅 Commissioners must neither punt on the SCR disallowance as per Márquez Peterson-3 nor allow partial recovery as per Tovar-1. Commissioners must not fall for the "used and useful" ploy. Remember: "The Commission was not designed to protect public service corporations and their management but, rather, was established to protect our citizens from the results of speculation, mismanagement, and abuse of power."³ The Commission must do its job to protect the citizens.</p> <p>Márquez Peterson-3: The evidentiary record on SCR prudence has been fully briefed in the current rate case proceeding, which was determined in the ROO to be the "most appropriate context" and "the best vehicle" for the decision. Sierra Club has provided ample evidence that the SCR project investments were imprudent. Complex issues like securitization (or legislative action) outside of the Commission's ratemaking authority must not be conflated with the central issue of SCR prudence because securitization is like a layaway plan: It can only make an imprudent purchase somewhat more affordable, but does <u>not</u> alter the fact that SCR investment was imprudent to begin with. So, no kicking the can to another proceeding, with \$485 million (ROO at 115) hanging over ratepayers' heads for years more.</p> <p>Tovar-1: While at first glance it appears to be a reasonable compromise to allow partial recovery of SCR investment, this Amendment ignores the strong admonition in the ROO at 115, namely: "But the fact that plant is used and useful, alone, is not tantamount to prudence." Tovar-1 also overlooks the fact that commissioners are elected to be regulators to protect citizens — not appointed as mediators to conduct "split-the-difference" negotiations from the dais. It is not a commissioner's job to find the middle ground. Let the evidentiary record tell you if the SCR investment was prudent or if it wasn't. Just because a Rolex was used to tell time, doesn't make 54% of the enormous cost a prudent investment.</p>

¹ "Response to the Chairwoman: Yes, Please Make the On-Peak Window From 4-7 p.m." at: <https://docket.images.azcc.gov/E000015676.pdf>

² "Looking to save on your energy bill? Give precooling a try" at: <https://www.aps.com/en/About/Our-Company/Newsroom/Articles/Looking-to-save-on-your-energy-bill-Give-precooling-a-try>

³ Ariz. Corp. Comm'n v. State ex rel. Woods at: <https://law.justia.com/cases/arizona/supreme-court/1992/cv-91-0082-sa-2.html>

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	<p>Taken to its logical conclusion, Tovar-1 would allow the unthinkable and set a dangerous precedent: 100% SCR recovery if APS hadn't announced early curtailment and retirement! Tovar-1 falls prey to the "used and useful" fallacy while downplaying the precursor evidence in the rate case proceeding that APS may have "willfully maintained ignorance" about changing direction at some point prior to the completion of the SCRs. It's clear in the ROO at 112-115 that APS failed its duty to always monitor the economic viability of investments — while APS was telling investors a different story. Instead it doubled down on continued operation of 4CPP, and thus installation of the SCRs.</p> <p>Finally, both these amendments ignore ample public evidence:</p> <ul style="list-style-type: none"> • Jeopardized Economic Viability: Although APS had been warning investors since 2009 that the plant's economic viability could be jeopardized, it announced early retirement and summer curtailment in 2020-2021 after rate case filing, with Decision No. 74876 and SCRs ROO in hand. • EPA Settlement of Unlawful Modification Claims: While APS has conveniently blamed EPA regulations, APS's decades-long unlawful actions were responsible for the 2015 Settlement and SCRs in the first place! The EPA had been investigating APS since 2009 and let's not forget that the 2015 EPA Settlement and the Consent Decree,⁴ which made the SCRs necessary, specifically resolved prior claims that APS violated the federal Clean Air Act by unlawfully modifying the 4CPP Units 4 and 5 in 1985, 2007 and 2008 without obtaining required permits or installing and operating the best available air pollution control technology. APS's unlawful actions, thus responsible for the SCRs in the first place, make SCRs investment imprudent.⁵ • Fake Growth: APS is also claiming that SCRs should be deemed prudent because they allowed an approved purchase to operate. But APS had misled the Commission and ratepayers into approving the purchase of Units 4 and 5 based on fake hypergrowth in peak demand of 3.25% year after year — off by a factor of 10 — which was nothing but a self-serving fantasy. • Excess Capacity: These kinds of unnecessary investments are <u>not</u> harmless. Because of 4CPP, APS was able to maintain 52% higher capacity, i.e., 22.8% reserve margin vs. the required 15% reserve margin over 2010-2020 — amounting to an average of more than 550 MW excess capacity over and above the 15% reserve margin.⁶ These reckless investments have unnecessarily cost ratepayers hundreds of millions or possibly billions of dollars with no reliability benefits since they exceeded the required 15% reserve margin. • Hired Gun: APS has retained the likes of Henry Darwin to express thoughts about significant negative environmental implications. But as Director of ADEQ, he was busy unsuccessfully suing the EPA on behalf of SRP (where he had worked briefly as in-house environmental counsel⁷) because the EPA disapproved Arizona's Best Available Retrofit Technology (BART) determination in the State Implementation Plan (SIP) for SRP's Coronado Generating Station, a two-unit, 733-megawatt coal-fueled plant located in Eastern Arizona.⁸ Plus, as an after-the-fact "expert," Mr. Darwin neither testifies under oath nor can his claims be cross-examined. • No Chance, Really? The SCE purchase was predicated on APS (and Staff) making false promises about 0% probability that Four Corners would be retired or curtailed prior to 2038. APS had pooh-poohed vehement objections by Sierra Club, gave the Sierra Club a runaround, provided insufficient information, and dumped new information at the hearing without prior review. <p>Any attempt to delay the resolution of SCR prudence in the current proceeding or to permit partial recovery is unjust and unreasonable to the ratepayers. If APS decides to challenge the legality of the decision through the court system, so be it. It's APS's prerogative. Your prerogative is to protect the citizens from speculation, mismanagement, and abuse of power and not get cowed into letting APS off the hook because of that possibility. <u>The Commission must disallow SCR Recovery exactly as recommended in the ROO.</u></p>

⁴ Four Corners Consent Decree at: <https://www.epa.gov/sites/default/files/2015-06/documents/fourcorners-cd.pdf>

⁵ "Commissioners, Here's Why You Should Follow the ROO and Disallow SCR Recovery" at: <https://docket.images.azcc.gov/E000015750.pdf>

⁶ Based on analysis of actual peak load vs. total resources available from Pinnacle West Statistical Reports for 2010-2020

⁷ Henry Darwin at: <https://projects.propublica.org/trump-town/staffers/henry-darwin>

⁸ Arizona Darwin v. Environmental Protection Agency at: <https://caselaw.findlaw.com/us-9th-circuit/1726863.html>

Amendment	Recommendation/ Rationale
Márquez Peterson-4 (CCT)	👎 The Commission has indicated that it expects the issue to be addressed for APS in this rate case. And yet, this Amendment unjustifiably kicks the can down the road by neither approving nor denying the CCT issues at this time. See Olson-2 and particularly O'Connor-2 Amendments below.
Márquez Peterson-5 (TOU EV)	👍 See the EV explanation under Olson-4 Amendment.
Márquez Peterson-6 (CERR)	👍 The Clean Energy Rate Rider for municipalities for streetlight and public lighting rate plans to ensure they receive 100% of the electricity from renewable energy makes sense.
Kennedy-1R (PSA)	➡ Should be combined with O'Connor-3R Amendment, which covers the same issue in greater detail, after important language in Kennedy-1R regarding PSA audit is added to O'Connor-3R.
Kennedy-2 (4-7 p.m.)	➡ Should be withdrawn and <u>replaced</u> by Márquez Peterson-1R Amendment, which covers the same issue in greater detail.
Kennedy-3 (EIS) Kennedy-4 (TCA) Kennedy-5 (LFCR) Kennedy-6 (TEAM)	<p>👍 These amendments end the adjustor shell-game between rate cases and replace it with rate case transparency and scrutiny.⁹ APS has also told investors: "If the outcome of the case does not provide for necessary investments to support customer growth and to maintain the financial health of the company, we have the option to petition the commission for reconsideration of that decision, to challenge the legality of the decision through the court system or to file another rate case."¹⁰ Any argument about regulatory lag is moot because the soon-to-be-filed next rate case obviates the need for the continuation of EIS, TCA, LFCR, and TEAM adjustors.</p> <p>😞 TEAM adjustor is a refund/credit on the bill for taxes overpaid by ratepayers. It's not clear what the effect of its discontinuation will be.</p> <p>😞 It's not clear what the impact will be, if any, on the continuing REAC adjustor if PSA adjustor is discontinued via Kennedy-1R or O'Connor-3R Amendment.</p>
Kennedy-7 (Securitization)	👎 According to Utility Dive, securitization can be a beneficial financing tool to lower utility and customer costs — <i>when properly applied</i> — but to be effective it needs robust oversight to protect customers. Enabling legislation is the key that allows the bond to be secured by customers and should give ACC the authority and resources to carry out robust oversight, including the authority to require evidence in the utility's filing from a bond team representing ratepayers in negotiations on the deal structure and transaction fees. ¹¹
Kennedy-8 (EE and DSMAC)	👍 Energy efficiency is one of the fastest, most cost-effective ways to save money, reduce greenhouse gas emissions, create jobs, and meet growing energy demand, according to the EPA. ¹²
Kennedy-9 (Low-income)	<p>👍 Providing higher discount for those with higher energy burdens is reasonable. However, important issues related to the low-income discount program have been ignored.¹³</p> <p>🕒 Per the ROO at 364, there were only 77,700 customers enrolled (so only about 6.5% of APS's residential customers) in the low-income discount program. But 31.9% of APS's customers qualify at 200% FPL eligibility, based on the census data.¹⁴ In other words, only 1 out 5 eligible customers is enrolled in the low-income discount program! THAT MUST CHANGE. This amendment must add language to hold APS accountable in a measurable and meaningful way to close the enormous gap by properly administering the low-income discount program.</p> <p>🕒 Per the ROO at 365, the low-income discount costs \$27-28 million. And yet, APS has been collecting as much as \$48 million toward low-income discount funding since the last rate case</p>

⁹ Please End the Adjustor Shell Game ASAP at: <https://docket.images.azcc.gov/E000013147.pdf>

¹⁰ Pinnacle West Capital Corporation (PNW) Q2 2021 Earnings Call Transcript at: <https://www.fool.com/earnings/call-transcripts/2021/08/05/pinnacle-west-capital-corporation-pnw-q2-2021-earn/>

¹¹ "Possible hundreds of billions in US power sector securitizations spur ratepayer protection debate" at: <https://www.utilitydive.com/news/possible-hundreds-of-billions-in-us-power-plant-securitizations-spur-ratepa/595089/>

¹² "Benefits of Energy Efficiency" at: <https://www.epa.gov/statelocalenergy/local-energy-efficiency-benefits-and-opportunities>

¹³ "Wait, Is APS Profiting Tens of Millions From Underfunding Low-Income Discount Programs?" at: <https://docket.images.azcc.gov/E000012808.pdf>

¹⁴ "Distribution of Total Population by Federal Poverty Level" at: <https://www.kff.org/other/state-indicator/distribution-by-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

Amendment	Recommendation/ Rationale
	<p>and pocketing the \$20 million difference each year. This is unjust and unreasonable as it affects <u>all</u> (NOT just non-participating as the ROO claims) customers because the program cost is collected through base rates. <u>This amendment must add language to hold APS accountable in a measurable and meaningful way to report and refund any over-recovery in the low-income discount program since the last rate case until October 2021 and make ratepayers whole in a timely manner.</u></p> <p>🙄 It's not clear whether the ROO recommended approval of the APS-requested limited-income deferral mechanism. If so, the overage issue becomes moot going forward, but that still would not refund the significant APS over-recovery (low-income program funding less program expenses) since the last rate case.</p>
Kennedy-10 (Solar Communities)	<p>👍 Solar Communities is a worthwhile program, which makes solar accessible to low and moderate income customers.</p> <p>🕒 <u>However, only about 700 installations in nearly four years¹⁵ barely scratches the surface considering that 31.9% of APS's customers are at or below 200% FPL. Rather than the do-the-best-you-can approach, this Amendment must add language to hold APS accountable in a measurable and meaningful way to optimize the program funding. In addition to the number of installations, APS must be asked to report in its quarterly update the average cost per completed installation for the quarter and program-to-date for each category to ensure that the costs charged to the Solar Communities program are prudently incurred.</u></p> <p>🕒 Incorporate language regarding eligibility for nonprofits and monthly bill credit from Tovar-2.</p>
Kennedy-11 (GAC)	👍 Any charge — and especially Grid Access Charge only levied on certain solar customers — which cannot be cost-justified, is unjust, unreasonable, and discriminatory.
Kennedy-12 (E-20)	🙄 Without a detailed analysis, it's not clear if the frozen E-20 plan would be economical and beneficial to religious houses of worship considering the on-peak window (11 a.m. to 9 p.m.), off-peak excess demand charge, and energy charge tariffs vs. currently available service plans
Kennedy-13 (AIAP)	👍 👍 Listen for yourself: Don Brandt defiantly testified to the ACC during the Sep. 4, 2019 Special Open Meeting that APS management's " first allegiance " was to the shareholders who own the company. ¹⁶ Tens of millions in AIAP bonuses — with goals disproportionately weighted to shareholder interests — should be borne by shareholders and not by ratepayers. The Commission cannot be fooled by empty slogans like: "Customers are at the center of everything we do." Actions such as specific metrics and weights must speak louder than words.
Kennedy-14 (DG system)	👍 Brings consistency across APS and TEP service areas to DG system sizing.
Kennedy-15R (E-32 L SP)	👍 Fixes the commercial battery storage pilot, which has generated zero participation.
Kennedy-16 (ROE)	➡ Should be combined with Olson-1 Amendment below after adding FVI deduction from ROE language to it.
Olson-1 (ROE)	<p>👍 👍 A downward adjustment to the recommended ROE due to management inefficiency is not only appropriate, but it is long overdue. It also has precedence at other PUCs.¹⁷ The potential negative effects on APS's ability to raise capital are merely a red herring.¹⁸</p> <p>🕒 Revise for FVI reduction from ROE from Kennedy-16 Amendment.</p>
Olson-2 (CCT)	➡ Should be withdrawn and <u>replaced</u> by O'Connor-2 Amendment, which is superior.
Olson-3 (CC&N)	👍 👍 It is incumbent on the Commission to review, hear, receive comments, and vote on all legitimate CC&N applications in a timely fashion. It is shameful and unacceptable that under the monopolies' influence, the Commission has become a place where CC&N applications have gone

¹⁵ APS 3Q 2021 Solar Communities Status Report at: <https://docket.images.azcc.gov/E000015941.pdf>

¹⁶ Don Brandt Testimony to the ACC on 9/4/2019, 3:22:09 mark, at:

https://azcc.granicus.com/player/clip/3657?view_id=3&redirect=true&entrytime=12129

¹⁷ "The ROO Is a Good Start, but It Doesn't Go Nearly Far Enough" at: <https://docket.images.azcc.gov/E000015847.pdf>

¹⁸ "The 2021 Paul Walker Sequel. 'Wall Street Sharks II: Supervillains to Saviors'" at: <https://docket.images.azcc.gov/E000015407.pdf>

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	to die over many years. 🗳️ The Commission must investigate the staffers responsible for ignoring previous CC&N applications and hold them accountable.
Olson-4 (DCFC)	👍 EV is a nascent, fast-growing, global industry that is in the public interest. Already Lucid, Nikola and ElectraMeccanica are turning Arizona into a major EV manufacturing hub, attracting other suppliers, and creating thousands of new jobs. ¹⁹ Considering that a typical passenger vehicle emits about 4.6 metric tons of carbon dioxide per year , according to the EPA, ²⁰ EVs generate enormous benefits for all those who breathe air. With major auto manufacturers like GM announcing plans to phase out gas and diesel cars by 2035, ²¹ a large majority of Arizonans will soon rely on and benefit from an affordable EV infrastructure. There will be a major bottleneck if there aren't at least as many charging stations in the near future as there are gas station pumps. The demand limiter is temporary, gradually declines, and expires in 10 years. All these reasons makes DCFC rate rider just and reasonable.
Olson-5 (Crisis Bill Assistance)	👍 A large majority of low-income customers (4 out of 5) are not receiving low-income discounts (see Kennedy-9 above). Plus Crisis Bill Assistance may be needed by even those who are not necessarily low-income customers as the economy experiences unprecedented dislocations. The additional amount is relatively small. For all these reasons the increase in Crisis Bill Assistance is justified.
Olson-6 (D&O Insurance)	➡️ Should be withdrawn and <u>replaced</u> by O'Connor-1 Amendment, which is superior.
Tovar-1 (SCR)	👎👎 Discussed above with Márquez Peterson-3 Amendment.
Tovar-2 (Solar Comm.)	➡️ Elements such as eligibility for nonprofits and monthly bill credit should be combined with Kennedy-10 Amendment, which expands the program budget.
O'Connor-1 (D&O Insurance)	<p>👍 Ratepayers should not be indemnifying the errors of APS directors and officers, especially when D&O insurance is designed to protect directors and officers from personal losses if they are sued by employees, vendors, customers, or other parties. These exposures may include securities litigation, regulatory actions, allegations of misrepresentation, and breaches of fiduciary.²²</p> <p>There is no evidence in the docket that APS has attracted or retained qualified directors and officers purely because of D&O insurance — something APS is highly likely to pay for regardless of whether ratepayers are picking up part of the tab.</p>
O'Connor-2 (CCT)	<p>👍 Sadly, the impact of plant shutdowns on coal-based economies will be severe, but APS ratepayers alone should not be on the hook for this statewide, socio-economic cost for plants with multiple utility partners, with some like PNM not even based in Arizona. Higher rates because of CCT would disproportionately affect lower income customers with higher energy burden.</p> <p>Further, the process used by APS to bind ratepayers without any representation was highly inappropriate and must not be condoned. Unfortunately, two wrongs don't make a right.</p>
O'Connor-3R (PSA)	<p>👍 PSA process and account balance has been out of control²³ and this Amendment rightfully puts the burden on the entity that controls the process from beginning to end, namely APS — and not the ratepayers.</p> <p>🗳️ The language regarding elimination of the PSA audit must be removed and replaced by the language in Kennedy-1R Amendment regarding the PSA audit to be paid by APS to ensure that costs in the Tracking Account balance were prudently incurred.</p>

¹⁹ "Arizona could become an electric vehicle manufacturing hub" at: <https://apnews.com/article/arizona-electric-vehicles-technology-business-7c2f64d3162cdd9321da678f1a5fd23c>

²⁰ Greenhouse Gas Emissions from a Typical Passenger Vehicle at: <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle>

²¹ "GM Plans To Phase Out Gas And Diesel Cars By 2035" at: <https://www.forbes.com/wheels/news/gm-phase-out-gas-diesel-cars-2035/>

²² "What is Directors & Officers (D&O) Liability Insurance?" at: <https://www.travelers.com/professional-liability-insurance/directors-officers>

²³ "PSA Balance Keeps Skyrocketing. Where the Heck is Staff's PSA Audit Report!?" at: <https://docket.images.azcc.gov/E000015625.pdf>

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O'Connor-4	<p>👍 Industry developments, research, and knowledge help ratepayers — if these dues are not given to pseudo-lobbying organizations for the electric utility industry that promote a pro-utility and anti-consumer agenda or engage in legislative or regulatory advocacy.</p> <p>🔗 <u>To the extent ratepayers will be picking up half of a sizeable tab, specific language to prohibit industry lobbying, anti-consumer measures, and legislative or regulatory advocacy, if one doesn't exists already, must be added to make the intent explicit rather than relying on APS to do the right thing.</u></p>
Hearing Division-1	👍
Hearing Division-2	<p>😞 One of the major criticisms of a demand charge is its "gotcha" nature: For example, a single slipup of the AC coming on during the summer — even for a single, on-peak hour — can spike the R-3 monthly bill by \$117. Demand limiter will not help. Averaging demand would have protected customers against these unpleasant and costly surprises that can happen to anyone because of inattention, guests/children who may be unaware, malfunctioning thermostat and equipment, etc.</p> <p>With 4 out of 5 customers on the R-3 plan already on MEP, the impact of any disruption to the Rate Comparison Tool (RCT) will be minimal. (Remember, APS finally got the RCT to work properly in Feb. 2020 — more than two and a half years after the Aug. 2017 rate increase.) APS's exceptions are not persuasive. It's a shame that the Company's so-called "smart" meter technology, for which ratepayers have paid hundreds of millions of dollars, is too inflexible to handle a simple, customer-friendly change.</p> <p>🔗 <u>APS's current bill doesn't even show WHEN (Date/Hour) the peak demand occurred — only how much it was. That glaring omission prevents customers from managing their usage effectively. My request to APS in March 2021 to explain the process a customer would use to determine the timing of the peak demand charge was ignored. The Commission must order APS to show the Date/Hour of the highest demand reflected in the bill.</u></p>
Hearing Division-3	👍